

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DARRYL R. CHAMBERS,

Plaintiff,

vs.

DELA CRUZ, Case Manager, Tecumseh State Prison, All employed at Lincoln Correctional Center; SCOTT FRAKES, Director, All employed at Lincoln Correctional Center; COLEMAN, Case Manager, Nebraska State Penitentiary, All employed at Lincoln Correctional Center; AMANDA CHADWICK, Unit Manager; ZAMORA, Case Manager; CROWDER, Case Manager, All employed at Lincoln Correctional Center; CATHY SHEIR, Warden, All employed at Lincoln Correctional Center; SHERWOOD, Case Manager, All employed at Lincoln Correctional Center; HANSEN, Warden; ATHENA THOMAS, Unit Administrator, All employed at Tecumseh Correctional Center; HARDY, Corporal, All employed at Tecumseh Correctional Center; PAM HILLMAN, All Employed at Tecumseh Correctional Center; BRAD HANSEN, Warden, All employed at Tecumseh Correctional Center; HARBANS S. DEOL, D.O.; JOHN DOE NOS. 1-5, and CRAIG GABLE, Warden;

Defendants.

4:19-CV-3047

**ORDER ON MOTION TO EXTEND
FILING DEADLINE**

This matter is before the Court on Darryl R. Chambers's *pro se* Motion to Extend Filing Deadline. [Filing 170](#). In the Motion, Chambers explains that his counsel has recently withdrawn, that he is incarcerated, and that he intends to file an appeal. [Filing 170 at 1](#). Chambers requests an extension "of no less than 180 days" to allow him to prepare for an appeal or seek the services of another attorney. [Filing 170 at 1–2](#). The Court grants the Motion in part.

Both Rule 4(a)(5) and [28 U.S.C. § 2107\(c\)](#) permit a district court to extend the deadline in which to file a notice of appeal for “excusable neglect or good cause.” [Fed. R. App. P. 4\(a\)\(5\); 28 U.S.C. § 2107\(c\); see also *United States v. Sadler*, 480 F.3d 932, 937 n.5 \(9th Cir. 2007\)](#) (noting that both Rule 4(a)(5) and § 2107(c) “are, for the most part, substantively the same”). When analyzing whether there is excusable neglect or good cause to extend the deadline for filing an appeal, the Court “tak[es] account of all relevant circumstances surrounding the party’s omission.” [Gibbons v. United States](#), 317 F.3d 852, 854 (8th Cir. 2003). Courts use four factors to determine whether excusable neglect or good cause for an extension exists: “(1) the danger of prejudice to the non-moving party; (2) the length of delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith.” [Treasurer, Trs. of Drury Indus., Inc. Health Care Plan & Tr. v. Goding](#), 692 F.3d 888, 893 (8th Cir. 2012). The reason given for the delay is “critical to the inquiry.” [Gibbons](#), 317 F.3d at 854 (quoting [Lowry v. McDonnell Douglas Corp.](#), 211 F.3d 457, 463 (8th Cir. 2000)). “[T]he good cause standard ‘applies in situations where there is not fault-excusable or otherwise[;]’ i.e., ‘the need for an extension is . . . occasioned by something that is not within the control of the movant.’” *Id.* at 853 n.3 (alterations in original) (quoting Fed. R. App. P. 4 advisory committee’s note to 2002 amendments).

Because the Court intends to grant a short extension, Chambers filed the Motion before the deadline to file an appeal had passed,¹ and Defendants have not voiced any opposition to Chambers’s Motion, the Court concludes that the danger of prejudice is minimal. Further, the Court cannot think of a reason why a short extension would negatively impact judicial proceedings. The Court is also convinced that Chambers seeks this extension in good faith.

¹ The Court filed its Judgment on December 15, 2022. [Filing 164](#). Chambers filed his Motion on January 13, 2023, one day before the deadline to file a notice of appeal. [Filing 170](#).

Turning to the “reason for delay”—the most important factor—the Court concludes that it does not weigh against a short extension. The Court acknowledges that Chambers was represented by appointed counsel for the majority of this case, who was permitted to withdraw as counsel on December 20, 2022, [Filing 166](#), shortly after the Court filed its judgment. The Court also finds it relevant that Chambers is an incarcerated person presently proceeding *pro se*. None of these circumstances were within Chambers’s control. *See Gibbons*, 317 F.3d at 853 n.3. Therefore, the Court concludes that Chambers has shown good cause for an extension of time. *See Wright v. Missouri Dep’t of Mental Health*, No. 4:18 CV 1981 RWS, 2021 WL 5505380, at *1 (E.D. Mo. Nov. 24, 2021) (finding good cause because, *inter alia*, the movant was a *pro se* civil detainee who had his materials pertaining to the court’s judgment confiscated).

Turning to the length of the extension, the Court notes that while 28 U.S.C. § 2107(c) does not limit the length of an extension, Federal Rule of Appellate 4(a)(5) says that no extension can exceed 30 days after the time an appeal must be taken. *Compare 28 U.S.C. § 2107(c)* (“The district court may . . . extend the time for appeal upon a showing of excusable neglect or good cause.”), *with Fed. R. App. P. 4(a)(5)* (“No extension . . . may exceed 30 days after the prescribed time . . .”). Rule 4(a)(5) is a non-jurisdictional mandatory claims-processing rule that “must be enforced when invoked.” *Hamer v. Neighborhood Hous. Servs. of Chicago*, 138 S. Ct. 13, 17 (2017). Even though Defendants have not voiced any opposition to Chambers’s request for at least a 180-day extension, the Court believes that it is prudent to nonetheless constrain itself to Rule 4(a)(5)’s 30-day limitation. Therefore, the Court will extend the appeal deadline by thirty days, *i.e.*, to February 13, 2023. Accordingly,

IT IS ORDERED that Chambers’s Motion to Extend Filing Deadline, [Filing 170](#), is granted in part. The deadline for filing an appeal is extended by thirty days, *i.e.*, to February 13, 2023.

Dated this 23rd day of January, 2023.

BY THE COURT:



Brian C. Buescher
United States District Judge